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EXAMINER

CHUKWURAH, NATHANIEL C

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

DETAILED ACTION

1. This office action is in response to the amendment filed on 9/8/2009.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 34-36, 38 and 41-44 are rejected under 35 U.S.C. 102(b) as being anticipated by Brazell, II (US 4,759,412).

With regard to claim 34, Brazell discloses a hammer assembly, including a housing (80), a substantially elongated hammer (82) having first and second tool (first flat end and second flat end for hammering action) ends capable of extending through the lower opening of the housing as shown in Figure 1 to strike an external working surface, a drive mechanism (88) for reciprocating the hammer (82), the hammer is capable of being removed from the housing by removing the collar (40), take the hammer out, reversed and replaced in first and second orientation to extend to through the lower end.

With regard to claim 35, Brazell shows protrusions considered to be engaging the drive mechanism as shown in Figure 6.

With regard to claim 36, Brazell's hammer includes at least two protrusions as shown in Figure 6 considered to be adapted for engagement with the drive mechanism (88), and located on a common hammer face.

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With regard to claim 38, Brazell's hammer housing is attached to machine (Fig. 1), the drive mechanism is enclosed within the housing (80).

With regard to claim 41, Brazell's hammer is adapted to drop under gravity.

With regard to claim 42, Brazell's drive mechanism includes means (88) for engaging and driving the hammer.

With regard to claim 43, Brazell's hammer assembly operates as claimed.

With regard to claim 44, Brazell's hammer is cylindrical (Fig.1).

4. Claim 56 is rejected under 35 U.S.C. 102(b) as being anticipated by Kikel (US 4,848,197).

With regard to claim 56, Kikel discloses a multiple bit hand tool housing (2), and a method step of, withdrawing the tool bit (5) considered to be a hammer since the bit can be used as a hammer by hitting with the tool bit; reversing and reinserting the tool into the housing (2).

The recitation "a method of interchanging the tool ends on a hammer assembly including: a housing; a hammer received in the housing; and a drive mechanism for reciprocating the hammer, wherein the hammer is a substantially elongated weight with first and second tool ends located at opposing longitudinal ends of the weight, each tool end capable of extending through a lower opening end in the housing to strike an external working surface, the hammer assembly characterised in that the hammer is capable of being removed from the housing, reversed and replaced in the housing, enabling either of the first and second tool ends orientated to extend through the lower opening end in the housing to be interchanged" is

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considered a preamble of the claim and while it is given a consideration, it is not pertinent to the patentability of the method steps claimed.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 37, 45 and 48-52 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brazell in view of Sicotte (US 3,205,952).

With regard to claim 37, Brazell's hammer shows in addition to protrusion and a drive mechanism to the degree that it does not show, a loop of chain, at least one dog and a motor.

Sicotte teaches hammer assembly including a loop of chain, at least one dog and a motor for the purpose of driving the hammer.

In view of the teaching of Sicotte, it would have been obvious to one skilled in the art to modify Brazell hammer assembly by providing a loop of chain, at least one dog and a motor for the purpose of driving the hammer.

With regard to claim 45, while Brazell's hammer has not shown a multifaceted, such feature is within the knowledge to provide a multifaceted tool for different task. However, it would have been obvious to one skilled in the art to provide Brazell's with multifaceted tool in order to use the tool for different breaking task.

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With regard to claim 48, modified Brazell hammer includes at least two sprockets (27, 28), and at least one dog (31) and a chain (26).

With regard to claim 49, Brazell's hammer includes a dog (31) attached to a chain (26) and is adapted to engage the protrusion as shown in Figure Brazell's hammer.

With regard to claim 50, modified Brazell's hammer is considered adapted to be rotated around the at least two sprockets.

With regard to claim 51, modified Brazell's sprockets, dog and chain are aligned substantially parallel to the hammer for the hammer to strike directly to the tool bit.

With regard to claim 52, modified Brazell sprockets, dog and chain are aligned substantially perpendicular to the hammer as viewed in different orientation.

7. Claim 39, 40 and 47 is rejected under 35 U.S.C. 103(a) as being unpatentable over Brazell in view of Robson (US 5,363,835).

With regard to claim 37, Brazell's hammer assembly discloses the claimed subject matter to the degree that it does not show the tool ends are configured as a substantially flat surface, a blade, a substantially convex surface, substantially concave surface, or a spike.

Robson teaches hammer assembly including tool ends having different shapes, example tapered and flat ends. Therefore, it would have been obvious to one skilled in the art to modify Brazell hammer ends by providing different shapes in order to meet the desired task.

With regard to claims 39 and 40, Brazell discloses the claimed subject matter to the degree that it does not show a cushion. Robson teaches hammer assembly including cushion fixed at lower end of housing for purpose of cushioning the shock/impact.

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In view of the teaching of Robson, it would have been obvious to one skilled in the art to provide Brazell hammer assembly with cushion for purpose of cushioning the shock/impact.

8. Claims 53-55 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brazell in view of Sicotte as applied to claim 48 and further in view of Robson.

With regard to claim 53, modified Brazell discloses the claimed subject matter to the degree that it does not show a connecting apparatus between the hammer and housing. Robson teaches hammer assembly including connecting apparatus (22, 23) between the hammer and housing for purpose of cushioning the shock/impact.

In view of the teaching of Robson, it would have been obvious to one skilled in the art to provide Brazell hammer assembly with connecting apparatus for purpose of cushioning the shock/impact.

With regard to claims 54 and 55, the connecting apparatus of the modified Brazell is considered to be capable of elastic deformation and detachable.

Response to Arguments

9. Applicant's arguments filed 9/8/2009 have been fully considered but they are not persuasive.

During examination, the claims must be interpreted as broadly as their terms reasonably allow. *In re Am. Acad. of Sci. Tech Ctr.*, 367 F.3d 1359, 1369, 70 USPQ2d 1827, 1834 (Fed. Cir. 2004). *See also* MPEP § 2111.01.

Applicant is arguing that guide 80 of Brazell is not a house. The Examiner contends that guide 82 is considered a house because it encloses or encases the tool 22 which is part of the

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hammer designated 82 as shown Brazell's Figure 1. The Examiner further considers Brazell's housing as the combination element 24 and guide 80.

Further, Applicant argues that Brazell's hammer is not capable of striking a "working surface". The Examiner disagrees with applicant, and contends that Brazell's hammer is capable of striking a working surface designated 20 as shown in Figure 1.

Applicant argues that there is no suggestion in *Kikel* that the tool can also have reciprocating movement. Applicant claimed a method step of: withdrawing the hammer from the housing, reversing the orientation of the hammer, and reinserting the hammer into the housing.

Kikel shows a method of interchanging a tool characterized by the steps of: withdrawing the hammer from the housing, reversing the orientation of the hammer, and reinserting the hammer into the housing. While element 5 is not expressly designated as a hammer, element 5 is considered a hammer wherein it is capable of receiving continuous impact. The priors as applied and the rejection are proper.

Conclusion

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to NATHANIEL C. CHUKWURAH whose telephone number is (571)272-4457. The examiner can normally be reached on M-F 8:00AM-4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi Rada can be reached on (571) 272-4467. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

12. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Nathaniel C. Chukwurah/
Examiner, Art Unit 3721

/Rinaldi I Rada/
Supervisory Patent Examiner, Art Unit 3721
12/11/2009.